

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BERNEDA GILMORE	:	
	:	
Plaintiff,	:	CIVIL ACTION NO.:
	:	
v.	:	JURY TRIAL DEMANDED
	:	
LASTWAGEN INTERNATIONAL, INC.	:	
and KEITH MCGUIRE	:	
	:	
Defendants.	:	

DEFENDANTS' NOTICE OF REMOVAL

PLEASE TAKE NOTICE that defendant, Lastwagen International, Inc. ("LII") , by and through their attorneys, Salmon, Ricchezza, Singer & Turchi LLP, hereby remove this matter from the Court of Common Pleas, Delaware County, Pennsylvania, to the United States District Court of the Eastern District of Pennsylvania pursuant to 28 U.S.C. Section 1441 *et seq.* and in support thereof aver as follows:

REMOVAL IS TIMELY UNDER 28 U.S.C. § 1446

1. This action was initially commenced by Plaintiff, Berneda Gilmore ("Plaintiff"), with the Complaint having been filed in the Delaware County Court of Common Pleas on May 13, 2021 and docketed in the matter entitled *Gilmore v. McGuire and Lastwagen International, Inc.*, No. 2021-2397. A true and correct copy of Plaintiff's Civil Cover Sheet, Summons, and Plaintiff's Complaint is annexed hereto as **Exhibit "A"**.

2. The undersigned received a copy of Plaintiff's Civil Cover Sheet, Summons, and Complaint by way of electronic filing on May 13, 2021.

3. Defendant Keith McGuire has yet to be properly served with the Complaint.
{00405626.DOC}

4. This Notice of Removal is being filed within thirty (30) days after Plaintiff served Removing Defendant with the formal Complaint, thereby enabling Removing Defendant to ascertain that this case is one which has become removable in accordance with 28 U.S.C. § 1446(b). *See Murphy Bros., Inc. Michetti Pipe Stringing, Inc.* 526 U.S. 344 (1999); *Sikirica v. Nationwide Insurance Co.*, 416 F.3d Cir. 2005).

5. Pursuant to 28 U.S.C. § 1446(d), upon filing this Notice of Removal, Removing Defendants will file a Notice of Removal in the State Court Action pending in the Common Pleas Court of Delaware County, Pennsylvania and will provide written notice to Plaintiff. A true and correct copy of the Removing Defendants' Notice of Filing of Removal is annexed hereto as **Exhibit "B."**

DIVERSITY OF CITIZENSHIP EXISTS UNDER 28 U.S.C. § 1332

6. Upon information and belief, at all times relevant hereto, Plaintiff is and was a citizen of the State of Delaware residing at 1128 Chestnut Street, Wilmington, DE, 19805. *See Complaint*, Exhibit A ¶ 1.

7. At all times relevant hereto, Defendant, Lastwagen International, Inc., is and was a Canadian corporation organized and existing under the laws of the providence of Ontario with its principal place of business in Ontario at 349 Kenora Avenue, Hamilton, Ontario, L8E2W8. *See id.* ¶ 1.

8. At all times relevant hereto, Defendant, Keith McGuire, is and was a citizen of the providence of Ontario, Canada, residing at 152 Henry Street, Stirling, Ontario, K0K3E0. *See id.* ¶ 1.

9. Diversity of citizenship existed at the time the action sought to be removed was commenced and continues through the time of filing of this Notice.

AMOUNT IN CONTROVERSY EXCEEDS \$75,000

10. Great West Casualty Company, the insurer for defendants, McGuire and LII, has been advised by Plaintiff and her counsel that she has had months of physical therapy to conservatively treat her cervical complaints. Thereafter, she started treating with an orthopedic doctor and has received 3 rounds of injections to her cervical spine. As a result of the failed cervical injections, Plaintiff has received pain management treatment including nerve ablation procedures and Botox injections which she continues to receive. In addition, surgery has been recommended, but not yet received.

11. It is further noted that Plaintiff is on Social Security and, as a result, it is anticipated that there will be a Medicare lien for her treatment.

12. After receipt of the defense of this matter, the undersigned communicated with Plaintiff's counsel to see if Plaintiff would stipulate that the value of her case was less than \$75,000.00. In response, Matthew Bilker, Esquire, advised by email that he could not agree to stipulate damages under \$75,000 because Plaintiff is still actively treating. A true and correct copy of said email correspondence is attached hereto as **Exhibit "C."**

13. Based on the aforementioned injuries, it appears that this case has an amount in controversy in excess of \$75,000.00 exclusive of interest and costs.

14. As such, the amount in controversy exceeds the jurisdictional threshold required by 28 U.S.C. § 1332(a).

**DIVERSITY JURISDICTION IS SATISFIED
AND VENUE IS PROPER**

15. Based upon the above, this Court has original subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1332, 28 U.S.C. §1441 and 28 U.S.C. § 1446.


16. Venue is proper in that the events or omissions giving rise to the claim occurred in Delaware County, Pennsylvania, which is situated in this Judicial District. *See* 28 U.S.C. § 1391(b)(2).19. Removing Defendants will promptly file a copy of this Notice with the Clerk of the Court of Common Pleas in Delaware County, Pennsylvania in the State Court Action as required by 28 U.S.C. § 1446(d) and provide written notice to Plaintiffs.

17. Defendants LII and McGuire consent to removal of this matter.

WHEREFORE, Petitioner prays that the above-captioned action, now pending against it in the Delaware Court of Common Pleas, be removed therefrom to this Court.

SALMON, RICCHEZZA, SINGER & TURCHI LLP

By:


Joseph A. Ricchezza, Esq. (PA ID #66171)
1601 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 606-6600
*Attorneys for Defendant,
Lastwagen International, Inc.*

Date: May 25, 2021

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BERNEDA GILMORE

Plaintiff,

v.

LASTWAGEN INTERNATIONAL, INC.
and KEITH MCGUIRE

Defendants.

CIVIL ACTION NO.: 21-2397

JURY TRIAL DEMANDED

CERTIFICATE OF SERVICE

I, Joseph A. Ricchezza, Esquire, hereby certify that the foregoing *Notice of Removal* was served on this 25th day of May 2021, via U.S. First Class Mail upon the following counsel of record:

Leonard A. Sloane, Esquire
Matthew Bilker, Esquire
Eckell, Sparks, Levy, Auerbach, Monte, Rainer & Sloane, P.C.
344 West Front Street
Media, PA 19063
Attorneys for Plaintiff, Berneda Gilmore

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements by me are willfully false, I am subject to punishment.

SALMON, RICCHEZZA, SINGER & TURCHI LLP

By: /s/ Joseph A. Ricchezza
Joseph A. Ricchezza, Esquire
Attorney ID #66171
1601 Market Street, Suite 2500
Philadelphia, PA 19103
(215) 606-6600
*Attorneys for Defendant, Lastwagen
International, Inc.*

Date: May 25, 2021

{00405626.DOC}

EXHIBIT “A”

ECKELL, SPARKS, LEVY, AUERBACH, MONTE,
SLOANE, MATTHEWS & AUSLANDER, P.C.

Leonard A. Sloane, Esquire

I.D. No.: 21271

Matthew J. Bilker, Esquire

I.D. No.: 311284

300 W. State Street, Ste. 300

P.O. Box 319

Media, PA 19063

(610) 565-3700

ATTORNEYS FOR PLAINTIFFS

COURT OF COMMON PLEAS OF DELAWARE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

BERNEDA GILMORE
1128 Chestnut Street
Wilmington, DE 19805

Plaintiff

v.

KEITH MCGUIRE
152 Henry Street
Stirling, Ontario, K0K 3E0, Canada

and

LASTWAGEN INTERNATIONAL, INC.
349 Kenora Avenue
Hamilton, ON L8E 2W3, Canada

Defendants

NO. CV-2021-002397

JURY TRIAL DEMANDED

COMPLAINT

1. Plaintiff, Berneda Gilmore, is an adult individual residing at 1128 Chestnut Street, Wilmington, DE 19805.
2. Defendant, Keith McGuire, is an adult individual who resides at 152 Henry Street, Stirling, Ontario, K0K 3E0, Canada.
3. Defendant Lastwagen International, Inc. (hereinafter "Lastwagen"), is a Canadian corporation duly authorized to conduct business in the Commonwealth of Pennsylvania.
4. At all times relevant and material hereto, Defendant, Lastwagen, owned a Peterbilt Tractor Trailer, being operated by Defendant, Keith McGuire, with permission and/or acting in his capacity as agent, servant, workman and/or employee of Defendant,

Lastwagen, and within the course and scope of his employment with Defendant, Lastwagen.

5. At all times material and relevant hereto, Plaintiff, Berneda Gilmore, controlled and operated a black 2018 Hyundai Elantra.
6. On or about March 13, 2019, Plaintiff, Berneda Gilmore, was operating the black, 2018 Hyundai Elantra, proceeding northbound along I-95 near the Kerlin Street exit in Chester, Delaware County, Pennsylvania, traveling at a speed of approximately 5 mph.
7. At the same time and place, Defendant, Keith McGuire, who was operating a tractor trailer, owned by Lastwagen, proceeded northbound behind Plaintiff on I-95, in Chester, Delaware County, Pennsylvania.
8. At all times relevant and material hereto, it is believed, and therefore averred, that Defendant, Keith McGuire, was fatigued, exhausted and/or otherwise inappropriately inattentive as a result of his driving schedule.
9. At the aforementioned location, Defendant, Keith McGuire, an alleged professional driver, recklessly and/or negligently and suddenly and without warning, struck the rear of Plaintiff's vehicle.

COUNT I

Plaintiff, Berneda Gilmore v. Defendants, Keith McGuire and Lastwagen International, Inc.

10. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully set forth at length herein.
11. At all times material and relevant hereto, the reckless, negligent and/or careless acts and/or omissions of Defendant, Keith McGuire, consisted of, but were not limited to, the following:

- a. Operating a motor vehicle with negligent and/or a careless disregard for others therein upon the roadway at that time, such as Plaintiff
- b. the rights and safety of others therein upon the roadway;
- c. Failing to keep his vehicle under proper and adequate control;
- d. Operating a motor vehicle at an excessive rate of speed under the circumstances;
- e. Failing to keep a proper lookout;
- f. Driving in a careless manner;
- g. Failing to exercise proper control over his vehicle;
- h. Failing to bring his vehicle to a stop to avoid the accident;
- i. Failure to operate the vehicle with due care under the existing circumstances;
- j. Failure to pay attention to the flow of traffic;
- k. Failure to keep a proper lookout for other motorists;
- l. Failure to stop within the assured clear distance ahead; and
- m. Operating the vehicle so as to create an unreasonable risk of bodily harm to another to a degree of probability that substantial harm could result.

12. As a direct and proximate result of the negligent and/or careless acts, and/or omissions of the Defendants, Keith McGuire and Lastwagen International as hereinbefore alleged, Plaintiff, Berneda Gilmore, sustained serious personal injuries which were either caused by, and/or aggravated by, the collision, including, but not limited to: an acute cervical strain and sprain with associated migraine headaches, cervical facet syndrome, thoracic and scapular strain and sprain, and right shoulder calcific tendinitis and bursitis.

13. As a further proximate cause of this accident, Plaintiff, Berneda Gilmore, has been, or will be, obligated to receive, and undergo medical attention and care, and/or to expend various sums of money and/or to incur various expenses which have and/or may exceed the sums recoverable under the limits in 75 P.S. Section 1711, and/or may be obligated to continue to expend such sums and/or incur such expenditures for an indefinite time in the future.

14. As a result of the negligence and/or carelessness of the Defendants, Keith McGuire, and Lastwagen International, as set forth above, Plaintiff, Berneda Gilmore, has sustained serious injuries, including, but not limited to, serious impairments of a body functions, endured physical pain, suffering, mental anguish and inconvenience and will continue to endure such physical pain, suffering, mental anguish and inconvenience for an indefinite time in the future, all to her great detriment and loss.

WHEREFORE, Plaintiff, Berneda Gilmore, demands judgment in her favor and against the Defendants, Keith McGuire, and Lastwagen International, Inc., individually and severally, in an amount in excess of Fifty Thousand (\$50,000.00), together with interest, costs, punitive damages and delay damages.

COUNT II

Plaintiff, Berneda Gilmore v. Defendant, Lastwagen International, Inc.

15. Plaintiff hereby incorporates by reference the preceding paragraphs as though fully set forth at length herein.

16. In addition to respondeat superior/vicarious liability, the recklessness, negligence, and/or carelessness of Defendant, Lastwagen International, Inc. consisted of the following:

- (a) Recklessly, negligently and/or carelessly entrusting the vehicle to another operator for use when it knew, or within the reasonable exercise of due care, should have known on the date of the accident, that the operator was incompetent, inexperienced, or otherwise incapable of safely and properly operating said vehicle;
- (b) Recklessly, negligently and/or carelessly entrusting a motor vehicle to another person, creating an appreciable risk of harm to all others, including the Plaintiff;
- (c) Recklessly, negligently and/or carelessly entrusting a motor vehicle to a person which it knew, or in the exercise of reasonable care, should have known, was going to drive the vehicle in an improper, and dangerous manner; and
- (d) Recklessly, negligently and/or carelessly entrusting a motor vehicle to a person, she knew, or in the exercise of reasonable care, should have known, should have been prohibited by law from operating vehicles on Pennsylvania highways at the time due to his condition.

17. As a direct and proximate result of the negligent and/or careless acts, and/or omissions of the Defendants as hereinbefore alleged, Plaintiff, Berneda Gilmore, sustained serious personal injuries which were either caused by, and/or aggravated by, the collision, including, but not limited to: an acute cervical strain and sprain with associated migraine headaches, cervical facet syndrome, thoracic and scapular strain and sprain, and right shoulder calcific tendinitis and bursitis.

18. As a further proximate cause of this accident, Plaintiff, Berneda Gilmore, has been, or will be, obligated to receive, and undergo medical attention and care, and/or to

expend various sums of money and/or to incur various expenses which have and/or may exceed the sums recoverable under the limits in 75 P.S. Section 1711, and/or may be obligated to continue to expend such sums and/or incur such expenditures for an indefinite time in the future.

19. As a result of the negligence and/or carelessness of the Defendants, Keith McGuire, and Lastwagen International, as set forth above, Plaintiff, Berneda Gilmore, has sustained serious injuries, including, but not limited to, serious impairments of a body functions, endured physical pain, suffering, mental anguish and inconvenience and will continue to endure such physical pain, suffering, mental anguish and inconvenience for an indefinite time in the future, all to her great detriment and loss.

WHEREFORE, Plaintiff, Berneda Gilmore, demands judgment in her favor and against the Defendants, Keith McGuire, and Lastwagen International, Inc., individually and severally, in an amount in excess of Fifty Thousand (\$50,000.00), together with interest, costs, punitive damages and delay damages.

ECKELL, SPARKS, LEVY, AUERBACH, MONTE,
SLOANE, MATTHEWS & AUSLANDER, P.C.

BY: 

Matthew J. Bilker, Esquire
Attorney for Plaintiff

Date: 5/13/2024

VERIFICATION

I, Brenda Cravens, do hereby verify the foregoing statements made were a true and correct description and are based on the best of my knowledge, information and belief and that I do not understand a statute subject to the penalties of 18 Fed. C.R. Section 4704, relating to sworn falsification of statements.


Brenda Cravens

Dated:

EXHIBIT “B”

SALMON RICCHEZZA SINGER & TURCHI LLP

By: Joseph A. Ricchezza, Esq. (PA ID #66171)

1601 Market Street, Suite 2500

Philadelphia, PA 19103

(215) 606-6600

Attorneys for Defendant,

Lastwagen International, Inc.

BERNEDA GILMORE

Plaintiff,

v.

LASTWAGEN INTERNATIONAL, INC.

and KEITH MCGUIRE

Defendants.

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CIVIL ACTION NO.: 21-2397

JURY TRIAL DEMANDED

To the Clerk of the Court:

Pursuant to 28 U.S.C. §1446(D), Defendant, Lastwagen International, Inc., file herewith a copy of the Notice of Removal which was filed in the United States District Court for the Eastern District of Pennsylvania.

SALMON, RICCHEZZA, SINGER & TURCHI, LLP

By:

/s/

Joseph A. Ricchezza., Esquire

Attorneys for Defendant,

Lastwagen International, Inc.

Dated: May 25, 2021

SALMON RICCHEZZA SINGER & TURCHI LLP

By: Joseph A. Ricchezza, Esq. (PA ID #66171)

1601 Market Street, Suite 2500

Philadelphia, PA 19103

(215) 606-6600

Attorneys for Defendant,

Lastwagen International, Inc.

BERNEDA GILMORE

Plaintiff,

v.

LASTWAGEN INTERNATIONAL, INC.

and KEITH MCGUIRE

Defendants.

CIVIL ACTION NO.: 21-2397

JURY TRIAL DEMANDED

It is hereby certified that a true and correct copy of the within captioned Notice of Removal Pursuant to 28 U.S.C. §1446(D) was served via First Class Mail on the below counsel for plaintiff:

Leonard A. Sloane, Esquire

Matthew Bilker, Esquire

Eckell, Sparks, Levy, Auerbach, Monte, Rainer & Sloane, P.C.

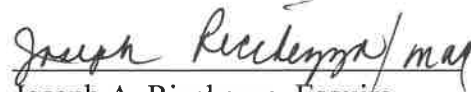
344 West Front Street

Media, PA 19063

Attorneys for Plaintiff, Berneda Gilmore

SALMON, RICCHEZZA, SINGER & TURCHI LLP

By:



Joseph A. Ricchezza, Esquire

1601 Market Street, Suite 2500

Philadelphia, PA 19103

(215) 606-6600

Attorneys for Defendant,

Lastwagen International, Inc.

Dated: May 25, 2021

EXHIBIT “C”

Natalie Orsimarsi

From: Bilker, Matt <mbilker@eckellsparks.com>
Sent: Thursday, March 25, 2021 1:14 PM
To: Joe Ricchezza
Cc: Natalie Orsimarsi
Subject: RE: Gilmore, Berneda

Joe,

I have spoken with my client – I do not believe we are in position to agree that the case is worth less than the jurisdictional limits at this point.

Matthew J. Bilker, Esquire
Eckell, Sparks, Levy, Auerbach, Monte,
Sloane, Matthews & Auslander, P.C.
300 West State Street, Suite 300
Media, PA 19063
Phone: 610-565-3700 ext. 252

*Delaware County Daily Times, Best Lawyer
Readers' Choice, 2020*

*Super Lawyers, Pennsylvania 2020
Rising Stars – General Litigation*

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* * * * *

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From: Joe Ricchezza <jricchezza@srstlaw.com>
Sent: Wednesday, March 17, 2021 9:49 AM
To: Bilker, Matt <mbilker@eckellsparks.com>
Cc: Natalie Orsimarsi <norsimarsi@srstlaw.com>
Subject: RE: Gilmore, Berneda

Hi Matt,

As I mentioned we will likely remove this case to federal court once the complaint is filed. Would you be willing to stipulate that the case is worth less than \$75K to avoid the removal? I have done this in the past so we don't waste time and effort going into federal court if the case does not warrant same.

Let me know.

Thanks.

Joe

From: Joe Ricchezza
Sent: Monday, March 15, 2021 11:35 PM
To: mbilker@eckellsparks.com
Subject: Gilmore, Berneda

Matt,

I have been retained to represent Lastwagen International and Keith Mcguire in the above matter. I understand that you filed a Writ on 3-9. Please let me know if the writ was served on my clients. Also, will you be filing a Complaint now? If not, I have been instructed to file a Rule once service is made.

I look forward to hearing from you. My contact information is below for your records.

Thanks.

Joe

Joseph Ricchezza, Esquire

SALMON, RICCHEZZA, SINGER & TURCHI, LLP
Tower Commons
123 Egg Harbor Road - Suite 406
Sewell, NJ 08080
(856) 842-0771 (direct)
(856) 354-8074 (main)
(856) 354-8075 (fax)

- and -

Our new Philadelphia Address:

1601 Market Street
Suite 2500
Philadelphia, PA 19103
(215) 606-6603 (direct)
(215) 606-6600 (main)
(215) 606-6601 (fax)

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